

1 CHARITY KENYON, SBN 078823
2 RIEGELS CAMPOS & KENYON LLP
2500 Venture Oaks Way, Suite 220
Sacramento, CA 95833-4222
3 Telephone: (916) 779-7100
4 Facsimile: (916) 779-7120

5 STEVEN BENITO RUSSO, SBN 104858
Chief of Enforcement
6 LUISA MENCHACA, SBN 123842
General Counsel

7 WILLIAM L. WILLIAMS, JR., SBN 99581
Commission Counsel

8 HOLLY B. ARMSTRONG, SBN 155142
Commission Counsel

9 **FAIR POLITICAL PRACTICES COMMISSION**

428 J Street, Suite 620
10 Sacramento, CA 95814
Telephone: (916) 322-5660
11 Facsimile: (916) 322-1932

12 Attorneys for Plaintiff

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF SACRAMENTO
16

17 FAIR POLITICAL PRACTICES COMMISSION,
a state agency,

18 Plaintiff,

19
20 v.

21 AGUA CALIENTE BAND OF CAHUILLA
INDIANS, and DOES I-XX,

22 Defendants.
23
24
25
26
27
28

Case No. 02AS04545

DECLARATION OF KAREN
GETMAN IN OPPOSITION TO
MOTION TO QUASH SERVICE AND
IN SUPPORT OF REQUEST FOR
JUDICIAL NOTICE (Evid. Code §
452(d).)

Date: December 20, 2002

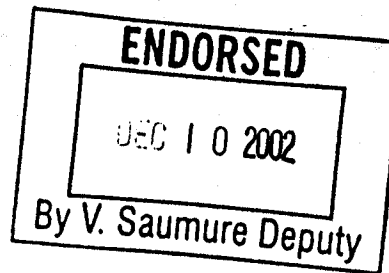
Time: 2:00 p.m.

Dept: 53

Judge: Hon. Loren McMaster

Action Filed July 31, 2002

No Trial Date Set



1 I, KAREN GETMAN, declare as follows:

2 1. I am Chairman of plaintiff Fair Political Practices Commission, having served in this office
3 continuously since March, 1999. I have personal knowledge of the matters set forth below, and if
4 called to testify on these matters, I could competently do so. In particular, I have at all times personally
5 supervised the Commission's conduct of the litigation described below, and this agency's coordination
6 with the office of the Attorney General. I make this declaration in opposition to defendant's motion to
7 quash, and in support of the Commission's request for judicial notice.

8 2. The Fair Political Practices Commission was created by the Political Reform Act of 1974, a
9 ballot initiative passed by California voters as Proposition 9. The Commission has five members,
10 appointed by four different appointing authorities and representing at least two different political
11 parties. The Chairman serves as the only full-time member of the Commission. The mission of the
12 Fair Political Practices Commission is to promote the integrity of representative state and local
13 government in California through fair, impartial interpretation and enforcement of political campaign,
14 lobbying, and conflict of interest laws. The Commission educates the public and public officials on the
15 requirements of the Act. It provides written and oral advice to public agencies and officials; conducts
16 seminars and training sessions; develops forms, manuals and instructions; and receives and files
17 statements of economic interests from many state and local officials. The Commission also
18 investigates alleged violations of the Political Reform Act, imposes penalties when appropriate, and
19 assists state and local agencies in developing and enforcing conflict-of-interest codes.

20 3. On or about August 8, 2000, I was served in my official capacity with a summons and
21 complaint for declaratory and injunctive relief in an action brought in the United States District Court
22 for the Eastern District of California, entitled *California ProLife Council, Inc. v. Karen Getman et al.*,
23 No. CIV S-00-1698 FCD GGH. The original complaint also named the other members of the
24 Commission, and the Attorney General of the State of California, all in their official capacities, as well
25 as the District Attorney for the County of Sacramento as a representative of a defendant class of District
26 Attorneys, and the City Attorney of the City of Sacramento, as a representative of a defendant class of
27 City Attorneys. The class allegations were ultimately dismissed, along with the District Attorney and
28 the City Attorney, leaving the Commission and the Attorney General as defendants in the action.

1 The Commission and the Attorney General actively litigated this action as co-defendants, collaborating
2 on all documents filed with the trial court.

3 4. One of the core purposes of the Act is the full and truthful disclosure of receipts and
4 expenditures made to influence the outcome of California elections “in order that the voters may be
5 fully informed and improper practices may be inhibited.” Government Code § 81002(a).
6 Organizations that receive or expend funds to influence California elections may be deemed
7 “committees” under the Act, with obligations to disclose certain receipts and expenditures. The
8 California ProLife Council, which appeared to meet the statutory definition of a “committee” with
9 disclosure obligations, challenged on constitutional grounds portions of the Act defining “committee.”
10 Defendants were compelled to defend the constitutionality of the challenged provisions, *inter alia*, by
11 establishing to the district court’s satisfaction that the state had a “compelling interest” in disclosure of
12 receipts and expenditures made to influence California elections. Defendants were successful in
13 obtaining early dismissal of several causes of action asserted by plaintiff in that case, defeated a motion
14 for preliminary injunction and, on January 22, 2002 defendants obtained summary judgment on what
15 remained of plaintiff’s claims. The matter is now pending before the Ninth Circuit Court of Appeals.

16 5. Attached hereto as Ex. “A” is a certified copy of a Declaration by David Binder filed in the
17 above-referenced ProLife case, in support of defendants’ opposition to plaintiff’s motion for
18 preliminary injunction, obtained from the district court’s records. In this Declaration, after establishing
19 his credentials as an expert in the subject, Mr. Binder testifies at length on the extent to which voters
20 can and do change their voting behavior when they are informed of the identities of the supporters or
21 opponents of candidates or ballot measures.

22 6. Attached hereto as Ex. “B” is a certified copy of a Declaration by Stephen K. Hopcraft in
23 support of defendants’ opposition to plaintiff’s motion for preliminary injunction in the ProLife case,
24 obtained from the district court’s records. In this Declaration, after establishing his expertise and
25 campaign experience, Mr. Hopcraft testifies that information gleaned from publicly-filed campaign
26 finance disclosure reports is “absolutely critical” to both voters and the news media, particularly in
27 sorting through the claims and counter-claims typically found in ballot measure campaigns.
28

1 7. Attached hereto as Ex. "C" is a certified copy of a Declaration by David Binder in support of
2 defendants motion for summary judgment in the ProLife case, obtained from the district court's
3 records. In this Declaration, Mr. Binder testifies on the results of his research on the impact of
4 campaign finance information on voters in past campaigns, and in addition he describes the findings of
5 a poll he designed for the ProLife litigation, to establish the importance assigned by the voters
6 themselves to information provided in campaign finance disclosure reports.

7 8. Attached hereto as Ex. "D" is a true and accurate copy of the district court's October 24, 2000
8 Memorandum and Order dismissing counts 1, 2, 3, 4, and 6 of plaintiff's complaint in the ProLife
9 action, and partially dismissing counts 5 and 10, based primarily on the court's conclusion that both the
10 United States Supreme Court and the Ninth Circuit Court of Appeals have recognized a state interest in
11 informing the electorate of campaign expenditures and "[m]oreover, the State's interest in requiring
12 organizations to provide information concerning their political expenditures and contributions is
13 particularly strong in California." (*Id.* at page 18.) The Commission will ask that this court take
14 judicial notice of the district court's finding on this point, under California Evidence Code § 452(d).
15 The district court's January 22, 2002 grant of summary judgment on the remaining claims in the
16 ProLife action did not revisit the "merits," but was based on procedural defects in plaintiff's surviving
17 claims.

18 9. Attached hereto as Ex. "E" is a true and accurate copy of a September 17, 2001Memorandum
19 and Order of the district court in a second case involving the Commission during my tenure as
20 Chairman, *Institute of Governmental Advocates, et al. v. Fair Political Practices Commission, et al.*,
21 No. Civ. S-01-859 FCD JFM. The district court's decision upholds the state's interest in the Act's
22 lobbyist provisions against a constitutional challenge to the recently-added restriction on contributions
23 from lobbyists. The Commission will ask that the court take judicial notice of this decision.

24 10. Attached hereto as Ex. "F" is a true and accurate copy of a Stipulation, Decision and Order of
25 the Fair Political Practices Commission, as contained in the Commission's files and signed by me on
26 December 8, 2000, along with a true and accurate copy of the "Statement of Respondent's Rights"
27 referred to in the Stipulation, Decision and Order. The Stipulation, Decision and Order is the outcome
28 of a Commission enforcement action (FPPC No. 2000-425) against the Pachenga Band of Luiseno

1 Indians, in which the respondent tribe admitted to having violated the Act, waived any and all
2 procedural rights to an administrative hearing, and paid a fine to the General Fund of the State of
3 California in the amount of \$2,000. The Commission will ask that the court take judicial notice of this
4 Stipulation, Decision and Order.

5 11. During the late 1990's, there were an unprecedented number of "private attorney general"
6 actions filed against individuals and groups who met the statutory definition of a "major donor" by
7 contributing \$10,000 or more to California candidates and committees in a single calendar year.
8 Between August 1998 and September 1999, the Commission received 347 requests, pursuant to
9 Government Code 91007, from individuals requesting that we undertake enforcement actions against
10 persons who allegedly failed to file a required major donor report; such requests are a statutory prelude
11 to filing a private attorney general action in court against the alleged violator. By September 1999, the
12 Commission was under a great deal of pressure to do something about the private attorney general
13 actions. We considered two proposals to counter the proliferation of private attorney general actions.
14 The first proposal would have changed the statutory definition of a "major donor" to exclude those who
15 contributed only to a single candidate or ballot measure, no matter how large the contribution. That
16 proposal met with extremely strong opposition from the public. The public opposition is summarized
17 by a Sacramento Bee editorial published on September 10, 1999, the day of our monthly meeting, and
18 entitled: "FPPC rule changes; Public needs more info, not less, about big givers." The editorial stated
19 in part: "More troubling is the legislative proposal to change the definition of major donor to exclude
20 anyone who gives to a single candidate or committee, no matter how large the contribution. Because
21 the recipient candidate or committee has to report, too, says Getman, major donor reports from these
22 single givers are 'duplicative' and 'unnecessary.' She's wrong. Here's why. Major politicians - Gov.
23 Gray Davis, for example -receive thousands of contributions a year. The contributions are filed on
24 hundreds of pieces of paper. It can take days to plow through Davis' filings looking for a single name.
25 Multiply Davis by 120 legislators and thousands of local elected officials and finding the big givers can
26 be all but impossible. That's why major donor [sic] were required to report in the first place and that's
27 why those reporting requirements still make sense." A true and accurate copy of the Sacramento Bee
28 editorial is attached hereto as Ex. "G.

1 12. The Commission ultimately decided against recommending any legislative change in the
2 definition of major donor. Instead, in September 1999 the Commission approved the second proposal,
3 which set up a streamlined enforcement procedure for handling major donor complaints and made the
4 handling of such complaints a priority for our enforcement division. In June 2000, we approved a
5 proactive enforcement program to track down and prosecute major donor violators. These enforcement
6 programs have enabled us to actively pursue large donors who fail to file a major donor report. In
7 calendar year 2000, we approved 42 administrative settlements of major donor cases, constituting 24%
8 of our enforcement caseload that year. In calendar year 2001, we prosecuted 67 cases under our
9 proactive major donor enforcement program, constituting 41% of our enforcement caseload that year.
10 Indeed, during the first year of our proactive major donor enforcement program (June 2000 – June
11 2001), we identified more than \$3 million in unreported contributions by major donors. Our emphasis
12 on major donor violators has had significant and positive impacts. Since we began our major donor
13 enforcement program in September 1999, not a single private attorney general action has been filed
14 against a major donor. More importantly, during the first year our proactive major donor enforcement
15 program was in operation, we saw an 83% reduction in identified major donor violations between the
16 first and second semi-annual filing periods.

17 I declare under penalty of perjury under the laws of the state of California that the foregoing is
18 true and correct of my own knowledge, and that this declaration was executed in Sacramento,
19 California, on December 9, 2002.

20
21 By: Karen Getman

22
23 Karen Getman
24 Chairman,
25 Fair Political Practices Commission
26
27
28